

LEGISLATIVE BILL 965

Approved by the Governor April 13, 2006

Introduced by Jensen, 20; Cunningham, 40; Combs, 32; Redfield, 12; Erdman, 47; Smith, 48; Price, 26

AN ACT relating to revenue and taxation; to amend section 77-2716, Revised Statutes Supplement, 2005; to adopt the Long-Term Care Savings Plan Act; to provide an income tax credit; to establish the Long-Term Care Partnership Program; to provide duties; to repeal the Long-Term Care Partnership Program Development Act; to harmonize provisions; to provide operative dates; to repeal the original section; and to outright repeal sections 68-1095, 68-1096, 68-1097, 68-1098, and 68-1099, Revised Statutes Supplement, 2005.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 5 of this act shall be known and may be cited as the Long-Term Care Savings Plan Act.

Sec. 2. For purposes of the Long-Term Care Savings Plan Act:

(1) Long-term care expense means the cost of long-term care in a long-term care facility and the cost of care provided in a person's home when the person receiving the care is unable to perform multiple basic life functions independently;

(2) Long-term care insurance premiums means premiums paid for a long-term care insurance policy issued pursuant to the Long-Term Care Insurance Act that offers coverage to the individual or the individual's spouse;

(3) Participant means an individual who has entered into a participation agreement or established an account with a financial institution with which the State Treasurer has an agreement under subsection (1) of section 3 of this act; and

(4) Qualified individual means (a) a person who turned sixty-five years of age or older during the taxable year who has a medical necessity for long-term care during the taxable year, (b) a disabled person who has a medical necessity for long-term care during the taxable year, or (c) a person who turned sixty-two years of age or older during the taxable year who made payments for long-term care insurance premiums during the taxable year.

Sec. 3. (1) The Nebraska long-term care savings plan is created. The State Treasurer shall select the administrator of the plan. If the State Treasurer receives no acceptable responses to a request for proposals for an administrator for the plan by November 1, 2006, the State Treasurer may enter into agreements with state-chartered or federally chartered banks, savings banks, building and loan associations, savings and loan associations, or credit unions, or a subsidiary of any such entity, to receive contributions in the form of account deposits. The State Treasurer may adopt and promulgate rules and regulations to carry out its duties under this subsection.

(2) If an administrator is selected, participants shall enter into participation agreements with the State Treasurer, and if an administrator is not selected, participants may make contributions to an account with a financial institution with which the State Treasurer has an agreement under subsection (1) of this section. A lifetime maximum of one hundred sixty-five thousand dollars may be contributed by a participant. This dollar limitation shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as amended.

(3) Each participation agreement shall provide that the agreement may be canceled or transferred to a spouse upon the terms and conditions set by the State Treasurer. If the participation agreement is canceled or the Nebraska long-term care savings plan is terminated, a participant may receive the principal amount of all contributions made by the participant or on behalf of the participant plus the actual investment earnings on the contributions, less any losses incurred on the contributions. A participant shall not receive more than the fair market value of his or her account under the participation agreement on the applicable liquidation date.

(4) A participant retains ownership of all contributions up to the date of utilization.

(5) State income tax treatment of contributions and investment earnings shall be as provided in section 77-2716.

Sec. 4. If an administrator for the Nebraska long-term care savings plan is selected pursuant to section 3 of this act, the Nebraska long-term care savings plan trust shall be created. The State Treasurer shall be the trustee of the trust and as such responsible for the administration,

operation, and maintenance of the plan and shall have all powers necessary to carry out and effectuate the purposes, objectives, and provisions of the Long-Term Care Savings Plan Act pertaining to the administration, operation, and maintenance of the trust, except that the state investment officer shall have fiduciary responsibility to make all decisions regarding the investment of the money in the trust, including the selection of all investment options and the approval of all fees and other costs charged to trust assets except costs for administration, operation, and maintenance of the trust, pursuant to the directions, guidelines, and policies established by the Nebraska Investment Council. The State Treasurer may adopt and promulgate rules and regulations to provide for the efficient administration, operation, and maintenance of the trust. The State Treasurer shall not adopt and promulgate rules and regulations that in any way interfere with the fiduciary responsibility of the state investment officer to make all decisions regarding the investment of money in the trust. The Nebraska Investment Council may adopt and promulgate rules and regulations to provide for the prudent investment of the assets of the trust. The council or its designee also has the authority to select and enter into agreements with individuals and entities to provide investment advice and management of the assets held by the trust, establish investment guidelines, objectives, and performance standards with respect to the assets held by the trust, and approve any fees, commissions, and expenses which directly or indirectly affect the return on assets.

Sec. 5. A qualified individual as defined in subdivision (4)(a) or (b) of section 2 of this act may make withdrawals as a participant in the Nebraska long-term care savings plan to pay or reimburse long-term care expenses. A qualified individual as defined in subdivision (4)(c) of section 2 of this act may make withdrawals to pay or reimburse long-term care insurance premiums. Any participant who is not a qualified individual or who makes a withdrawal for any reason other than transfer of funds to a spouse, long-term care expenses, long-term care insurance premiums, or death of the participant shall be subject to a ten-percent penalty on the amount withdrawn. The State Treasurer shall collect the penalty.

Sec. 6. Section 77-2716, Revised Statutes Supplement, 2005, is amended to read:

77-2716 (1) The following adjustments to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be made for interest or dividends received:

(a) There shall be subtracted interest or dividends received by the owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(b) There shall be subtracted that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (a) of this subsection as reported to the recipient by the regulated investment company;

(c) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes except that such interest or dividends shall not be added if received by a corporation which is a regulated investment company;

(d) There shall be added that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (c) of this subsection and excluded for federal income tax purposes as reported to the recipient by the regulated investment company; and

(e) (i) Any amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection or the investment in the regulated investment company and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(ii) Any amount added under this subsection shall be reduced by any expenses incurred in the production of such income to the extent disallowed in the computation of federal taxable income.

(2) There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the Tax Commissioner consistent, to the extent possible

under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident individual, estate, or trust, the net operating loss computed on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual, estate, or trust or for a partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carryovers or carrybacks shall be limited to the portion of the loss derived from or connected with Nebraska sources.

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1987, the amount of any state income tax refund to the extent such refund was deducted under the Internal Revenue Code, was not allowed in the computation of the tax due under the Nebraska Revenue Act of 1967, and is included in federal adjusted gross income.

(4) Federal adjusted gross income, or, for a fiduciary, federal taxable income shall be modified to exclude the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the Internal Revenue Code or from a limited liability company organized pursuant to the Limited Liability Company Act that is not derived from or connected with Nebraska sources as determined in section 77-2734.01.

(5) There shall be subtracted from federal adjusted gross income or, for corporations and fiduciaries, federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

(6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision (b) of this subsection shall be subtracted from the amount of federal taxable income used in subdivision (a) of this subsection. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

(7) Federal adjusted gross income shall be modified to exclude any amount repaid by the taxpayer for which a reduction in federal tax is allowed under section 1341(a)(5) of the Internal Revenue Code.

(8)(a) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent included, by income from interest, earnings, and state contributions received from the Nebraska educational savings plan trust created in sections 85-1801 to 85-1814.

(b) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent not deducted for federal income tax purposes, by the amount of any gift, grant, or donation made to the Nebraska educational savings plan trust for deposit in the endowment fund of the trust.

(c) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced by any contributions as a participant in the Nebraska educational savings plan trust, to the extent not deducted for federal income tax purposes, but not to exceed five hundred dollars per married filing separate return or one thousand dollars for any other return.

(d) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Nebraska educational savings plan trust to the extent previously deducted as a contribution to the trust.

(9)(a) For income tax returns filed after September 10, 2001, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by eighty-five percent of any amount of any federal bonus depreciation received under the federal Job Creation and Worker Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003, under section 168(k) or section 1400L of the Internal Revenue Code of 1986, as amended, for assets placed in service after September 10, 2001, and before

December 31, 2005.

(b) For a partnership, limited liability company, cooperative, including any cooperative exempt from income taxes under section 521 of the Internal Revenue Code of 1986, as amended, subchapter S corporation, or joint venture, the increase shall be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

(c) For a corporation with a unitary business having activity both inside and outside the state, the increase shall be apportioned to Nebraska in the same manner as income is apportioned to the state by section 77-2734.05.

(d) The amount of bonus depreciation added to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income by this subsection shall be subtracted in a later taxable year. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

(10) For taxable years beginning or deemed to begin on or after January 1, 2003, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount of any capital investment that is expensed under section 179 of the Internal Revenue Code of 1986, as amended, that is in excess of twenty-five thousand dollars that is allowed under the federal Jobs and Growth Tax Act of 2003. Twenty percent of the total amount of expensing added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following tax years.

(11)(a) Federal adjusted gross income shall be reduced by contributions, up to two thousand dollars per married filing jointly return or one thousand dollars for any other return, and any investment earnings made as a participant in the Nebraska long-term care savings plan under the Long-Term Care Savings Plan Act, to the extent not deducted for federal income tax purposes.

(b) Federal adjusted gross income shall be increased by the withdrawals made as a participant in the Nebraska long-term care savings plan under the act by a person who is not a qualified individual or for any reason other than transfer of funds to a spouse, long-term care expenses, long-term care insurance premiums, or death of the participant, including withdrawals made by reason of cancellation of the participation agreement or termination of the plan, to the extent previously deducted as a contribution or as investment earnings.

Sec. 7. The Long-Term Care Partnership Program is established. The program shall be administered by the Department of Health and Human Services Finance and Support in accordance with federal requirements on state long-term care partnership programs. In order to implement the program, the department shall file a state plan amendment with the federal Centers for Medicare and Medicaid Services pursuant to the requirements set forth in 42 U.S.C. 1396p(b), as such section existed on March 1, 2006.

Sec. 8. Sections 7, 8, and 10 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative for taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended.

Sec. 9. Original section 77-2716, Revised Statutes Supplement, 2005, is repealed.

Sec. 10. The following sections are outright repealed: Sections 68-1095, 68-1096, 68-1097, 68-1098, and 68-1099, Revised Statutes Supplement, 2005.